HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. Lodging No. 288 (S/S) year 2003

Harish Ram S/o Sri Paddi Ram

Versus

State of Uttaranchal
and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 21.11.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Lodging No. 288/2003

Harish Ram S/o Sri Paddi Ram
R/o Village Ganeshpur
Post Dapti (Kamdevi Devi)
District Bageshwar … Petitioner

Versus

1. State of Uttaranchal through
   Department of Forest, Uttaranchal Shasan
   Dehradun
2. Conservator of Forest
   Western Circle
   Nainital
3. Divisional Forest Officer
   Tarai East Forest Division
   Haldwani District Nainital … Respondents

Court No. 6
Date: 21.11.2003

Hon'ble Rajesh Tandon, J.

Rule. Respondents waive service. Heard Sri Manoj Tiwari learned counsel for the petitioner and standing counsel for the respondents. Both the parties have agreed that the matter may be finally disposed of.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus commanding the Respondent No. 3 to give the appointment as Forest Guard to the petitioner.

Further prayer has been made by the petitioner for the issue of a writ of mandamus commanding the Respondent No. 3 to grant all consequential benefits to the petitioner.

The petitioner has submitted that he belong to S.C. category and after having passed intermediate examination from U.P. Board in the year 1980, he has claimed that he has passed all the requisite qualifications for the appointment for the post of Forest Guard in Forest Department.

Pursuant to the advertisement dated 26.09.1995 issued by the respondent no. 3 applications for selection to the post of Forest Guards were invited. 18 vacancies were notified by means of the said notification out of which four were reserved for S.C. category and five for O.B.C. category candidates, and the remaining nine vacancies were unreserved.

The petitioner has stated that large number of candidates have applied for the appointment for the post of Forest Guards. The petitioner was also one of them. The selection process consisted of written examination, interview, physical efficiency test and medical test.

According to the petitioner the written examination was held on 14.10.1995 and those who were declared successful in the written examination were called for interview which was held on 10.12.1995.

The petitioner has further contended that on 18.12.1995 the candidates who have qualified in the earlier two stages of selection process, were subjected to physical efficiency test and as such the petitioner was required to appear for medical check up in Soban Jina Base Hospital, Haldwani on 21.12.2003.

The petitioner has further stated in paragraph 8 that the number of candidates were reduced to 15, as such, only 15 candidates were selected for appointment. The name of the petitioner finds place at Sl. No. 11 as will appear from the copy annexure 4. List of the selected candidates are quoted below:-

1 श्री बाल कृष्ण राम पुत्र श्री फकीर राम
2 श्री पूरन लाल साह पुत्र श्री गंगाजल साह
3 श्री कालीचरण सिंह यादव पुत्र श्री राजजन्म
4 श्री उमेश चन्द्र जोशी पुत्र श्री प्रेमबल्लभ जोशी
5 श्री विशन राम पुत्र श्री राम लाल
6 श्री नैन सिंह पुत्र श्री गंगाराम
7 श्री सुन्दर लाल पुत्र श्री गंगारार्म
8 श्री दीपचन्द्र उप्रेती पुत्र श्री पीताम्बर उप्रेती
9 श्री बागेश वर्मा पुत्र श्री कन्हैया लाल वर्मा
10 श्री अमोल कुमार गुप्ता पुत्र श्री राजेन्द्र प्रसाद गुप्ता
11 श्री हरीश राम पुत्र श्री पदीराम

12 श्री प्रकाश चंद्र जोशी पुत्र श्री पूरनानन्द जोशी

13 श्री छोटेलाल पुत्र श्री मुन्नालाल

14 श्री हंसादत्त दुमका पुत्र श्री नाथूराम दुमका

15 श्री जगदीश प्रसाद पुत्र श्री नरीराम

The petitioner has further stated in paragraph 10 of the writ petition that the candidates at Sl. No. 1, 2, 3, 4 and 8 of the select/merit list were given regular appointment as Forest Guard by the Respondent No. 3 on 22.12.2003, however the claim of the petitioner was ignored although he stood at Sl. No. 11 of the merit list.

So far as the appointment and conditions of service for the post of Forest Guard, the same are governed by the Lower Subordinate Forest Service Rule 1980 which was notified in the official gazette 13.06.1980. So far as the appointing authority of Forest Guard is concerned the same is covered in **part 3 of gazette notification dated 13.06.1980** which is quoted below:-

"5– सेवा में भर्ती निम्नलिखित स्रोतो की जायेगीः–

क– जमादार और मोहर्रिर ––

एक स्थायी रक्षको (वन्य जन्तु रक्षको को छोडकर) में से पदोन्नति द्धारा और दो सीधी भर्ती द्धारा

टिप्पणी –– भर्ती इस प्रकार की जायेगी कि संवर्ग के 50 प्रतिशत पद यथा सम्भव सीधा भर्ती द्धारा और शेष पदोन्नति द्धारा धृत किये जायं।

ख– रक्षक ––

(1) 90 प्रतिशत रिक्तियॉ सीधी भर्ती द्धारा : परन्तु ऐसी 90 प्रतिशत रिक्तियों में भर्ती इस प्रकार की जायेगी कि, यथासम्भव––

(क) 25 प्रतिशत रिक्तियॉ सार्वजनिक रूप से भरी जायें।

(ख) 65 प्रतिशत रिक्तियॉ सामयिक कर्मकारी में से भरी जायें।

(2) 10 प्रतिषत रिक्तियॉ श्रेणी चार (समूहं घ) के ऐसे स्थायी कर्मचारियों में से जिन्होने विज्ञान या कृषि में हाईस्कूल परीक्षा का प्रमाण पत्र होना आवश्क न होगा यदि उनकी भर्ती 4 अगस्त 1972 के पूर्व की गई हो, किन्तु किसी भी दषा में उनका जूनियर हाई स्कूल परीक्षा उत्तीर्ण होना आवश्यक है।

6– अनुसूचित जातियों, अनूसुचित जन–जातियॉ और अन्य श्रेणी के अभ्यार्थियों के लिये आरक्षण भर्ती के समय प्रवृत्त सरकार के आदेशो के अनुसार किया जायेगा।"

Counsel for the petitioner has submitted that since there is a provision for 90% direct recruitment for the post of Forest Guard and as such the petitioner is entitled to be considered for the same.

The petitioner has stated that on he is fully qualified according to the qualification which is mentioned under Rule 8.

The petitioner has stated that on his representation dated 13.09.1996 and he has received a reply from the respondents that there being a restrictions on the recruitment on post of Group-C and Group-D, therefore, the recruitment cannot be made. The contents of the letter dated 13.09.1996 is quoted below:-

> "उपरोक्त संदर्भ में सूचित किया जाता है कि माननीय न्यायालय के आदेशों के अन्तर्गत शासन द्धारा समूह ग तथा घ के पद पर नियुक्ति पर प्रतिबन्ध लगा दिये जाने के कारण शेष अभ्यार्थियो की नियुक्ति नही की जा सकी है। अतः इस विषय पर अग्रिम कार्यवाही न्यायालय के अग्रिम निर्णय के अनुसार ही किया जाना सम्भव होगा।"

The petitioner has further submitted that the persons who are in merit list at Sl. No. 6 has approached in writ petition no. 3806 (S/S) of 2001 namely, Nain Singh Vs. State and others, and on a direction made in the writ petition on 14.05.2003 Sri Nain Singh has been recruitment on the post of Forest Guard.

The petitioner has also referred the judgment of this Hon'ble Court which provides as under:-

> *"In compliance of the aforesaid order the petitioner preferred a representation before the D.F.O. Tarai East Forest Division, Haldwani and the respondent has passed order on 13.09.1996 to the effect that since there is ban imposed by the government for recruitment on the posts of group C and D and as such at present the petitioner cannot be given appointment. The petitioner has filed supplementary affidavit in which in paragraph no. 7 he has categorically stated that the Ganesh Lal Sah has been given appointment on 30.02.2001, copy of the appointment order is annexure SA3 to the supplementary affidavit. In view of the facts that the respondents have given appointment to Sri Ganesh Lal Sah on 30.07.2001 the respondents cannot deny the petitioner to provide appointment on the ground that the government has imposed ban on the recruitment group C and D.*
>
> *For the reasons stated above the respondent no. 3 will pass appropriate orders for the appointment of the petitioner as forest guard*

ignoring the plea that there is ban imposed by the government on making appointment on the posts of group C and group D if Sri Ganesh Las Sah as alleged by the petitioner has been given appointment by the respondents on 30.07.2001."

On 21.10.2003 the order has been passed by the Tarai East Forest Division, Haldwani in pursuance of the aforesaid order perused by this Hon'ble Court order dated 21.10.2003 is quoted below:-

"सिविल मिसलेनियस रिट पेटीषन सं0 3806/एस0एस0/2001 पुराना नम्बर 14509 आफ 1997 नैन बनाम राज्यादि मे मा0 उच्च न्यायालय नैनीताल द्वारा दि0 14.5.2003 को पारित आदेशों के अनुपालन के सम्बन्ध में सचिव, उत्तरॉचल शासन देहरादून के शासनादेश सॅ0 रिट–284/1(1) व0ग्रा0वि0/2003–1(66)–2003 दि0 21.10.2003 द्वारा जारी की गयी अधिसूचना सं0893/25.3.1 दि0 26.9.95 द्वारा प्राप्त निदेर्षों के अनुपालन में तत्कालीन प्रभागीय वनाधिकारी, तराई पूर्वी वन प्रभाग द्वारा जारी की गयी अधिसूचना सं0893/25.3.1 दि0 26.9.95 द्वारा अधिसूचित वन रक्षको के रिक्त पदों को भरने हेतु ली गयी लिखित एवं शारीरिक परीक्षा में उत्तीर्ण तथा विभागीय चयन समिति द्वारा दि0 10.12.95 को लिये गये साक्षात्कार के परिणाम स्वरूप उत्तीर्ण घोषित ,श्री नैन सिंह नेगी, पुत्र श्री गंगा सिहं को, जिनकी नियुक्ति ,शासनादेश सं0 3607(टी)/14.2.95 दि01.12.95 द्वारा समूह ग व घ के पदो पर सीधी भर्ती पर लगी रोक के कारण तअ नही की जा सकी थी, वन रक्षक के पद पर वेतनमान 2750–70–3800–75–4400 में नियमानुसार अनुमन्य अन्य समस्त भत्तों सहित, निम्न शर्तो के अधीन कार्यभार ग्रहण करने की तिथि से नितान्त अस्थायी तौर पर एतद द्वारा नियुक्त किया जाता है तथा अनकी तैनाती द0जौसासाल रेंज मे की जाती है।

The petitioner has stated that the ban which was imposed is no more in existence and as such the petitioner is entitled to be considered for the appointment for the post of Forest Guard in accordance with the provisions contained under the Rules framed in for the recruitment of Forest Guard known as Lower Subordinate Forest Service Rule 1980.

Admittedly the petitioner has appeared in the written examination held on 14.10.1995 in pursuance of the notification dated 26.09.1995 for the recruitment of the Forest Guard and he has qualified at all the stages i.e. during selection process as well as physical efficiency test and as such there was no occasion not to consider the petitioner.

In view of the facts stated aforesaid, the respondents are directed to consider the appointment of the petitioner as Forest Guard. Liberty is given to the petitioner to file a fresh representation in the light of the observations made above.

If such a representation a filed, the respondents shall dispose of the same within a period of one month from the date of filing of the certified copy of the order.

With the aforesaid observations the writ petition is disposed of finally. There will be no order as to costs.

21.11.2003 **(Rajesh Tandon, J.)**
ASWAL